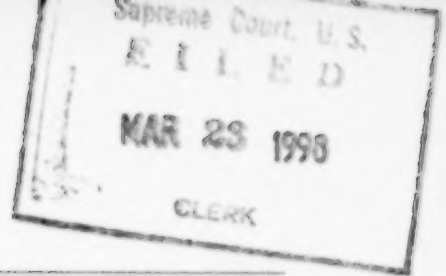


No. 97-1217



In The
Supreme Court of the United States
October Term, 1997

STATE OF NEW MEXICO, EX REL. MANUEL ORTIZ,
Petitioner,
v.

TIMOTHY REED,
Respondent.

On Petition For A Writ Of Certiorari
To The New Mexico Supreme Court

BRIEF IN OPPOSITION

STEVAN DOUGLAS LOONEY
(*Counsel of Record*)
CRIDER, BINGHAM & HURST, P.C.
3908 Carlisle Blvd., NE
Albuquerque, NM 87107
(505) 881-4545

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**COUNTERSTATEMENT
OF THE QUESTION PRESENTED**

Whether this Court should review a state court decision stemming from a habeas corpus challenge to extradition where the state court applied the cannons of extradition law to a case presenting episodic, singularly unique facts and where, accordingly, the decision cannot be reasonably applied to other cases.

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COUNTERSTATEMENT OF THE CASE¹

Respondent, Timothy "Little Rock" Reed (Reed), is part Lakota Sioux. In September of 1982, when Reed was twenty-one years old, he pleaded guilty to aggravated robbery and theft of drugs in Ohio. Reed was sentenced to two concurrent indeterminate terms of 7-25 years and 2-5 years imprisonment. The majority of this time was spent at the Southern Ohio Correctional Facility in Lucasville, Ohio. *App 2*

During his time at Lucasville, Reed maintained a record of good conduct and acted as an advisor and spokesperson for prisoners. He began writing about Native American issues, including religious freedom in prisons. His writings were distributed throughout the United States and Canada in various forums. Reed received national acclaim for his writings. *App 2-3*

In May 1992 Reed was released from the Ohio penitentiary to serve a one-year parole term. During the time he was on parole, he continued to write about Native American rights and acted as an advisor and spokesperson for Native Americans. At the time of his parole Reed had served more than the minimum term of his sentence. On his release from Lucasville, Reed worked as director

¹ The Opinion of the New Mexico Supreme Court is attached to the Petition for Writ of Certiorari as Appendix A. The Opinion sets forth in great detail the facts of this case. Respondent's counterstatement of the facts is presented to summarize the facts contained in the Opinion and to address misleading statements by Petitioner. Respondent's citations to the facts are to the Opinion of the New Mexico Supreme Court as set forth in Appendix A.

of the Native American Prisoners' Rehabilitation Research Project. He was also a full-time student working on a bachelor of arts degree in criminal justice and Indian affairs. *App 5*²

In September of 1992, Reed spoke at Ohio State University about the deprivation of religious expression for Native Americans in the Ohio Department of Corrections. The following week Reed's parole officer, Ron Mitchell ("Mitchell") called Reed into his office. Mitchell told Reed that the chief of the Ohio Adult Parole Authority had called him (for the first time ever) and directed him to order Reed not to travel and not to speak in public again about the Ohio Department of Corrections or the parole authority. Reed was told that he could no longer travel and that if he continued to write and speak on these topics his parole would be revoked and he would be returned to the penitentiary. Reed stopped traveling and curtailed his speech and writings as a result of this meeting. *App 6-7*

In March of 1993, six weeks before his parole term expired, Reed was involved in a minor accident with a car loaned to him by a Dinah Devoto. Reed was given a traffic citation and paid a small fine. This was Reed's only

² Reed maintained good conduct while in prison. While on parole Reed continued to conduct himself in a lawful and responsible manner, demonstrative of his good conduct and rehabilitation. Reed is now 37 years old, works as a paralegal for a prominent law firm in Albuquerque, New Mexico, is now married and has a 4 month old son, Jasper. Reed and his wife are actively involved in their traditional Native ceremonies and the Native American Church, and have established themselves as respected community members in the state of New Mexico.

brush with the law during his parole. The incident angered Mrs. Devoto's husband, Steve, and he threatened Reed over the telephone. Steve Devoto then filed a misdemeanor complaint against Reed in Kentucky falsely alleging Reed threatened him. On March 18, 1993, Reed was served with the summons and complaint. The following morning, Reed called his parole officer, Mitchell, to inform him of the charge. Dinah and Steve Devoto agreed to meet with Mitchell and tell him the charge was false. *App 8-9*

Mitchell refused to see the Devotos and told Reed to report to his office the following Monday morning because Reed was going back to Lucasville. Mitchell also told Reed there would be no on-site preliminary hearing and that he would have to see the parole board after he was back in prison. No neutral parole officer or other independent decision maker was involved in the decision to revoke Reed's parole. All of Reed's efforts to present affidavits and other evidence that the charge was false, including evidence from his accuser recanting the charge, were rebuffed by Mitchell. *App 9-11, 56-58*

On March 22, 1993 Reed fled Ohio. Reed left Ohio because his parole was revoked without a hearing and because his life was in danger. *App 8, 11-13, 14-16* Three (3) weeks after Reed would have been returned to prison had he been taken into custody, a riot occurred at the prison in Lucasville. During the riot, hostages were taken in a seige that lasted eleven days. Eight prisoners were killed, including Dennis Weaver, who like Reed, was a Native American writ writer and prisoners' rights advocate. *App 12-13*

Reed went to Taos, New Mexico, where he worked as a paralegal and writer. *App 14* On October 27, 1994, Reed was arrested on the New Mexico Governor's warrant. On November 1, 1994, Reed appeared in state district court where he was granted leave to file a petition for writ of habeas corpus. *App 16* Among other things, Reed's petition contained allegations of prospective constitutional violations and irreparable harm to him if he were returned to Ohio and that he had been denied a parole revocation hearing. *App, Opinion, passim.*

During this time Reed also petitioned both the governors of Ohio and New Mexico to investigate his case. New Mexico Attorney General, Tom Udall, refused to conduct an investigation, claiming the Governor had no authority to investigate. New Mexico's Uniform Extradition Act, N.M.S.A. §31-4-1, et seq., at §31-4-4 grants the governor of New Mexico authority to investigate the demand for extradition and whether grounds exist to surrender the extraditee.

A hearing on Reed's petition took place on three separate days, over a period of one month. *App 18* From the date of his arrest on October 27, 1994 to the date of his release on January 20, 1995, Reed was detained in the Taos County jail without any probable cause determination he had violated parole. *App 82-83*

In the habeas corpus proceeding, Reed presented uncontroverted and corroborated testimony that if he were returned to Ohio: 1) he will likely suffer death or great bodily harm at the hands of Ohio prison and/or parole-authority officials before having access to the courts of Ohio to (a) present his claims of constitutional

violations by such prison and parole authorities and (b) to argue Ohio's lack of lawful jurisdiction over him; and 2) he did not and will not receive a hearing for an alleged parole violation. Based upon proof of these claims, the trial court granted Reed's petition for habeas corpus. *App 19-20* The trial court found, inter alia, that Reed "had and has a reasonable fear that, if returned to an Ohio prison, he will suffer great bodily harm or injury" and concluded Reed's fear is both "genuine and substantiated." (R.P. 178-180) After a *de novo* review, the New Mexico Supreme Court determined there was compelling evidence to support the trial court's findings and decision to grant habeas corpus. *App, Majority Opinion, passim.*

Petitioner's sole objection during the habeas corpus proceeding was that Reed's evidence of past and prospective constitutional violations and irreparable harm was inadmissible because it was not relevant under *Michigan v. Doran*, 439 U.S. 282 (1978). Petitioner did not deny that Ohio had failed to give Reed a probable cause hearing prior to revoking his parole. Petitioner also refused to put on any evidence or to refute any of Reed's evidence, including evidence of prospective irreparable harm if he were returned to Ohio. *App 18-19*

Petitioner now asserts that "[o]ver objections by the State of New Mexico" Reed presented testimony from himself and affidavits from Ohio prisoners and that the Opinion is based only on Reed's testimony. *Petition at 3-4.* This assertion is not true and places the record in a false light. Petitioner attempts to mislead this court into concluding the only evidence was testimony from Reed and Ohio prisoners - implying their testimony was not credible because of their status. The evidence was not limited

in the manner stated by Petitioner, but included documentary evidence and the testimony of several other people having no criminal record, including Professor Harold E. Pepinsky, a Harvard Law graduate and Professor of Criminal Justice at Indiana University. *App* 11-12

In its Brief-in-Chief to the New Mexico Supreme Court Petitioner admitted that the trial "court's findings on the fugitivity question are supported by considerable, although improper and irrelevant evidence." *App* 23 During oral argument to the New Mexico Supreme Court, Petitioner also admitted that New Mexico has authority to deny extradition if this "considerable" evidence is true. In that event, Petitioner, through Assistant Attorney General Anthony Tupler, stated "this was the case of a lifetime in a lawyer's career . . . [and] I would not be concerned to grant the relief." *Respondent's Appendix* 1 Thus, Petitioner both admitted the evidence is considerable and advised the New Mexico Supreme Court it had authority to deny extradition if it found the record supported the trial court's decision to grant habeas corpus.

REASONS FOR DENYING THE PETITION

This case is rooted in singularly unique facts and circumstances. In its Opinion the New Mexico Supreme Court was emphatic that in the context of extradition law this case is distinguished from all others by a unique fact pattern that is supported by compelling evidence. *App* 2, 24, 52-53

It is precisely because of this unique fact pattern that the Opinion provides no controlling or persuasive

authority and thus lacks any genuine precedential value in our federal and state courts. Yet, in a frantic effort to convince this Court it should grant certiorari, Petitioner disingenuously undertakes to broaden the scope and impact of this case and exalt it to the level of the harbinger of the demise of the Extradition Clause. The arguments Petitioner advances in this undertaking find no support in the record and are wholly lacking in merit.

This case fails to satisfy any of the considerations of Supreme Court Rule 10 and provides this Court with no substantive or meaningful opportunity to address an important federal question. Indeed, this Court has settled the question addressed in the New Mexico Supreme Court's Opinion (the Opinion), and the Opinion does not conflict with the decisions of this Court, of a United States court of appeals or other state courts of last resort. For these reasons the petition should be denied.

I. Petitioner's Reliance on Prior Decisions of This Court Is Misguided.

Petitioner relies substantially on this Court's decision in *Michigan v. Doran*, 439 U.S. 282 (1978), when urging this Court to grant review. Petitioner asserts that the Opinion is erroneous because the Majority engaged in a broad inquiry into the fugitivity question, contrary to this Court's pronouncements in *Doran*. However, Petitioner's reliance on *Doran* is misguided and unavailing.

Contrary to Petitioner's assertions, *Doran* limits an asylum state's inquiry to the four factors urged by Petitioner, only where the demanding state has made a judicial determination of probable cause prior to issuance of

the extradition warrant. *Doran* at 289-290. In *Doran*, this Court resolved that where a judicial determination of probable cause has been made in the demanding state, the asylum state's courts are without power to review the finding of probable cause. *Doran*, 439 U.S. at 290. However, "the asylum state need not grant extradition unless that determination has been made. The demanding State, of course, has the burden of so demonstrating." *Doran*, 439 U.S. at 296 (Blackmun, J., concurring). In this case, Petitioner failed to meet its burden and New Mexico need not grant extradition.

Petitioner's reliance on the presumed validity of the governor's warrant is also unavailing. The declaration in *Doran* that a governor's grant of extradition is prima facie evidence that the constitutional or statutory requirements have been met, was premised on the fact that a prior judicial determination of probable cause had been made in the demanding state. In the instant case, no determination was made by Ohio, judicially or otherwise, that probable cause existed to revoke Reed's parole. Thus, New Mexico did not review Ohio's determination of probable cause, because there was none, and, accordingly, the New Mexico governor's warrant was not cloaked with a presumption of constitutional or statutory validity. Nothing in *Doran* required New Mexico to grant extradition under these circumstances.

No decisions of this Court, including *Doran*, preclude an asylum state from affording a habeas corpus petitioner due process when the extradition request is based upon an alleged parole violation where, as here, there has been no determination prior to issuance of the extradition warrant that probable cause existed to revoke parole. Thus,

the cases relied upon by Petitioner, whether decided prior to *Doran*, or for which *Doran* serves as their well-spring, are inapplicable.

For example, in *Sweeney v. Woodall*, 344 U.S. 86 (1952) the respondent alleged that prison conditions in Alabama violated his Eighth Amendment right to be free from cruel and unusual punishment. In the present case, Ohio's prison conditions are not at issue. Moreover, the question in *Sweeney* was whether a federal district court should entertain a fugitive's application for writ of habeas corpus after the asylum state court denied the application. *Sweeney*, 344 U.S. 88-89. Here, New Mexico state courts granted Reed's petition and no further federal district court review was sought. Thus, the question addressed in *Sweeney* is not presented in this case and Petitioner's reliance on *Sweeney* is inapposite.³

Petitioner's reliance on *Pacileo v. Walker*, 449 U.S. 86 (1980) is likewise misguided. *Pacileo*, too, involved allegations of unconstitutional prison conditions in the

³ Contrary to Petitioner's contentions, *Sweeney* does not preclude a court from taking evidence on the fugitivity question. In fact, *Sweeney* implicitly, if not explicitly, permits a broad-scope inquiry in extradition habeas corpus where, as here, prospective irreparable injury is alleged. The respondent in *Sweeney*, however, failed to prove he would suffer prospective irreparable harm if he were returned to Alabama. In the instant case, Reed alleged and proved that he had been denied a preliminary probable cause hearing and that no relief would be available to him in Ohio prior to the time he would suffer irreparable harm in Ohio. Furthermore, Petitioner advised the New Mexico Supreme Court that under these circumstances New Mexico had authority to grant Reed's petition for a writ of habeas corpus. *Respondent's App.* 1

demanding state and is as inapplicable to the instant matter as is *Sweeney*. In *Pacileo* the Supreme Court of California remanded the case to a lower court directing that there be a hearing to determine whether the conditions of the Arkansas prison conformed to Eighth Amendment requirements. In *Pacileo* this Court agreed with Petitioner that the asylum state had no authority to inquire into the prison conditions of the demanding state. *Pacileo*, 449 U.S. at 87. No such inquiry was made in the present case. Similarly, New Mexico made no inquiry into Reed's guilt or innocence or the merits of the alleged parole violation. Thus, Petitioner's reliance on this Court's pronouncements in *California v. Superior Court of California*, 482 U.S. 400 (1987) and *Puerto Rico v. Branstad, Governor of Iowa, et al.*, 483 U.S. 219 (1987) is equally unavailing.

It is well-established that before Reed's parole could be revoked, he was entitled to an initial due process hearing by an independent decision maker, i.e., someone other than Reed's parole officer, to determine if probable cause existed to revoke his parole. *Morrissey, et al. v. Brewer, et al.*, 408 U.S. 471, 485-486 (1972) Ohio never held the preliminary, or "on-site" hearing required by *Morrissey*. If for no other reason than this, Reed's petition for a writ of habeas corpus was properly granted.

Petitioner asserts that unless this Court grants review, the opinion will lead to an expansion by the asylum state into a demanding state's motives for seeking extradition. This assertion is spurious at best. For example, in *Morrissey* this court noted that it is unnecessary to impugn motives in order to support the need for, and right to, an independent decision maker's involvement in

the decision to revoke parole. *Morrissey*, 408 U.S. at 486, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970). Petitioner's attempt to claim Reed's release was based purely upon a challenge to Ohio's motives is an inartful attempt to divert the Court's attention from the fact that, under *Morrissey*, Ohio's motives are inconsequential and, that because Ohio made no determination of probable cause before the extradition warrant was issued, *Doran* and its progeny are inapplicable.

The Ohio extradition warrant was founded on an alleged parole violation stemming from a misdemeanor charge that the accuser attempted to withdraw prior to the date Reed was told to report to be returned to prison, just six weeks before his parole expired.⁴ In this case, Ohio's extradition warrant was not supported by any determination, judicial or otherwise, that probable cause existed to revoke Reed's parole. Consequently, New Mexico did not review such a determination. And, unlike the Governor of Michigan in *Doran*, the Governor of New Mexico did not act on a requisition for extradition that was supported by the demanding state's judicial determination of probable cause. Accordingly, *Doran* and its progeny are wholly inapplicable to this case.

⁴ Petitioner implies that Reed would not have been granted final release because his parole was for a period of not less than one year. Petition at 3-4. Petitioner cannot state in good faith that Reed would not have been released, as that claim would be contrary to the evidence, the record and Ohio's practice of routinely granting release at the expiration of the releasee's one-year term.

II. Reed Cannot Now Receive Constitutionally Mandated Due Process In Ohio.

In this case, there was "considerable" and compelling evidence that Ohio failed and refused to provide Reed the "on-site" probable cause hearing required by this Court in *Morrissey*. In fact, Reed was told that the probable cause hearing required by *Morrissey* would not occur. App 60 Thus, regardless of Ohio's motives, Reed's due process rights as guaranteed by the Fourth Amendment were violated by Ohio. Hence, the requirements of 28 U.S.C. §2241(c) regulating the use of habeas corpus are also met in this case, since Reed's continued custody was "in violation of the Constitution" of the United States. 28 U.S.C. 2241(c)(3). Consequently, New Mexico was not obliged to extradite Reed. *Doran*, 436 U.S. at 296 (Blackmun, J., concurring).

Petitioner's claim that Justice Pamela Minzner erred in her concurring opinion by concluding Reed was entitled to release on habeas corpus because his due process rights had been violated, is disposed of by the points raised above regarding the requirements of *Morrissey* and the inapplicability of *Sweeney*, *Doran* and *Doran's* progeny. Nevertheless, in a footnote, Petitioner belatedly relies on Ohio Admin. Code §5120:1-1-18(F) and claims the *Morrissey* preliminary hearing is required under Ohio law only after a parolee is returned to Ohio. Petition at 10-11. There are numerous problems with this claim, but it can be disposed of by focusing on only one.

Ohio Admin. Code 5120:1-1-18(F) provides that "When a **detainer** is placed against a releasee arrested or held in custody outside of the state of Ohio the [on-site

hearing procedures] shall not apply until the releasee is returned to custody within the state of Ohio." (Emphasis added) The procedures for filing a "detainer" as that term is used in §5120:1-1-18(F) are set forth in §5120:1-1-31. In the case of a releasee not in the custody of Ohio, a detainer must be filed on form 938-2. Ohio Admin. Code §5120:1-1-31(A) & (C)(2) The issuance of a detainer against Reed was a condition precedent to any right, or duty, Ohio had to conduct the on-site hearing if Reed were returned to Ohio. However, Petitioner presented no evidence at any time that a detainer had been issued on form 938-2 or in any other manner. Accordingly, Petitioner failed in its burden of proof and did not preserve this claim for review in the New Mexico Supreme Court or in this Court. Furthermore, conducting an on-site probable cause hearing at any time after Reed's release on January 20, 1995, would not satisfy the requirement of a prompt hearing established in *Morrissey*. *Morrissey*, 408 U.S. at 485.

Justice Minzner's thoughtful concurring opinion affords an independent basis for affirming the trial court's grant of habeas corpus to Reed. Petitioner's claim that this Court should grant certiorari because of the Majority's claimed error in employing a broad-scope inquiry is not only wrong under the unique facts of this case; it is rendered immaterial by the existence of an independent basis for granting Reed's petition for writ of habeas corpus for the reasons articulated by Justice Minzner.

III. Petitioner's Claim That The Opinion Will Cause Extradition Law To "Dissolve Into Chaos" Is Alarmist And Too Speculative To Warrant Review.

In the context of extradition habeas corpus, the leading cases in New Mexico demonstrate that New Mexico is, and continues to be, in agreement with relevant decisions of this Court, as well as federal and state courts. See, e.g., *Bazaldua v. Hanrahan*, 92 N.M. 596, 592 P.2d 512 (1979) (Court's of New Mexico are bound to follow a demanding state's judicial determination of probable cause); *Hopper v. State ex rel. Schiff*, 101 N.M. 71, 678 P.2d 699 (1984) (New Mexico courts are without authority to go behind charging documents to determine if demanding state acted lawfully under its laws); *State v. Sandoval*, 95 N.M. 254, 620 P.2d 1279 (1980) (New Mexico courts are without authority to inquire into demanding state's charges.) However, what distinguishes the instant case from all others is its unique facts, coupled with Reed's proof of those facts. Accordingly, the Opinion is not a departure from the vast and well-settled body of law on extradition habeas corpus. Rather, it is a thoughtful application of the law, to the compelling, yet unique, facts of this case.

In the instant case, the New Mexico Supreme Court "closely studied and sought guidance from the many judicial opinions and accepted canons of extradition law." *App* 53 In that effort, the New Mexico Supreme Court carefully applied the Extradition Clause and its implementing federal and state statutes, weighing them in the balance, in the context of the unique facts of this case, with the due process clause of the United States

Constitution, the New Mexico Constitution and the purposes and procedures available under the "Great Writ" of Habeas Corpus.

Contrary to Petitioner's assertions, New Mexico did not litigate the merits of Reed's alleged parole violation; it litigated the merits of Reed's entitlement, or not, to a writ of habeas corpus. Nor did the New Mexico Supreme Court base its Opinion solely on the New Mexico Constitution or a duress defense as urged by Petitioner. Like the duress or necessity defense, the due process clause and Inherent Rights Amendment of the New Mexico Constitution, Article II, §§18 and 4 respectively, were simply subsidiary and additional levels of analysis supporting the Opinion. The primary and operative reasons for the Majority's Opinion are derived "from many judicial opinions and accepted canons of extradition law", as applied to the unique circumstances of Reed's case. *App* at 53

This case is not properly analyzed under the Extradition Clause in the narrow and mechanical manner urged by Petitioner; rather it is properly viewed from the standpoint of the purpose of habeas corpus. Ascertaining the facts to determine whether a habeas corpus petitioner is entitled to relief is necessarily the proper function of the judiciary. If it were otherwise, as urged by Petitioner, the rights and procedures available to a habeas corpus petitioner would be rendered empty and meaningless.

Extradition habeas corpus pits the state against the individual. The conflict is between institutional demands of extradition and federalism and the importance of securing to individuals the guarantees embodied in the

Fourteenth Amendment. Under the novel facts of Reed's case, the New Mexico Supreme Court resolved the conflict in favor of the individual. This is not only appropriate, it is the very function of the Great Writ. As this Court has so eloquently said:

Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today habeas corpus . . . provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office. *Id.* at 401-402.

Faye v. Noia, 372 U.S. 391, 402 (1963) reversed on other grounds, *Wainwright v. Syder*, 433 U.S. 72, 87-90 (1977)

In the trial court Petitioner knowingly chose to rely on a narrow approach to the habeas corpus action and argued for a strict application of the *Doran* elements to this case, eschewing altogether the "historic office" of habeas corpus and ignoring New Mexico's rules of evidence.⁵ In a habeas corpus action, New Mexico's rules of

⁵ Petitioner elected its strategy and failed. In the trial court, Petitioner did not attempt to rebut any evidence, even evidence

evidence permit the trial court to take documentary evidence, including affidavits. *App* 22 This is consistent with federal habeas corpus law which provides that affidavits and documentary evidence are admissible. See, 28 U.S.C. §§2246 and 2247. New Mexico was not only permitted, it was required, to make factual determinations relative to whether Reed was entitled to release from custody, or whether he should be returned to Ohio.

There have been but a few cases where, as here, habeas corpus was granted and extradition was denied. See, e.g., *Commonwealth ex rel. Mattox v. Superintendent of County Prison*, 31 A.2d 576 (Pa. Super. Ct. 1943) (Extradition denied based upon showing by competent evidence that demanding state would not protect defendant from lynching.); *In Re Hampton*, 13 Ohio Dec. 579 (Hamilton County C.P., 1985) (Refusal to extradite in order to protect defendant from lynching, where previous extradition ended in a lynching.) This case presents one of those rare cases. Just as in these few cases, granting habeas corpus did not portend the end of the Extradition Clause, the Opinion, too, does not sound the death knell for extradition law. Petitioner's claims to the

that would not require any participation from Ohio authorities. *App* 23-24 Petitioner also failed to preserve evidentiary issues for appeal to the New Mexico Supreme Court, such as, for example, providing proof of the existence of an Ohio "detainer". Moreover, Reed's witnesses testified telephonically, and Ohio had ample opportunity throughout the proceedings to refute Reed's evidence in the same manner. Thus, contrary to Petitioner's assertions, Ohio's participation in the proceedings would not have been unduly burdensome and expensive, nor was their actual presence required.

contrary are incredulous. Indeed, New Mexico's extradition process continues unabated.

Petitioner inartfully ignores the unique circumstances of this case, something the New Mexico Supreme Court repeatedly emphasized as central to its Opinion, and urges this Court to believe that because of the Opinion the extradition process will "dissolve into chaos" and that granting habeas corpus to alleged parole violators will be a common recurrence. Essentially, Petitioner argues that, like Ohio, other states will fail to provide an alleged parole violator with constitutionally required due process prior to revoking parole, thus leading to release pursuant to extradition habeas corpus becoming the rule, rather than the exception. This suggestion is too tenuous and speculative to merit this Court's review.

Viewing this case as it did, *de novo*, on its unique ("once in a lifetime") facts, the New Mexico Supreme Court fulfilled its responsibility to the broader purposes of the United States Constitution, in light of "the many judicial opinions and accepted canons of extradition law", thus ensuring and preserving Reed's due process rights. Petitioner seeks to strip the "Great Writ" of Habeas Corpus of its historic office and to raise the Extradition Clause to an exalted status not shared by any other singular Article or provision of the United States Constitution. Indeed, Petitioner seeks to relegate equally important, if not more important, provisions of the United States Constitution to the status of mere afterthoughts, bereft of any import or purpose. This Court should decline Petitioner's invitation to join in its campaign and conjectures and deny the Petition.

CONCLUSION

Accordingly, for all the foregoing reasons, Petitioner's petition for writ of certiorari should be denied.

Respectfully submitted,

CRIDER, BINGHAM & HURST, P.C.

STEVAN DOUGLAS LOONEY
3908 Carlisle Blvd., NE
Albuquerque, NM 87107
(505) 881-4545

Appendix 1

Excerpts of the Oral Argument Before the New Mexico Supreme Court on February 13, 1996 in the Matter of Timothy Reed v. State of New Mexico ex rel. Manuel Ortiz

Justice Richard Ransom: Mr. Tupler, on the duress – I’m just asking you hypothetically – I’m not asking you to accept my hypothesis: but if the trial court in New Mexico had found on adequate evidence reason to believe the Ohio court would grant relief under habeas corpus and if the New Mexico court also found that it was unreasonable to expect that he could avail himself of the safety of the Ohio courts before suffering death or, or physical – serious physical injury, do you think then that the New Mexico court could grant the habeas corpus basically on the grounds that he would not have access to the Ohio courts before irreparable damage were done?

Mr. Anthony Tupler: Assuming – and I’m sure you know how difficult it is for me even to go that far – but assuming that that were true this, that could be the kind of extraordinary case which would allow, which would perhaps demonstrate Ms. Garlin’s point, this was the case of a lifetime in a lawyer’s career, – if it were that bad on that assumption I would have no difficulty that the court might as a matter of its inherent discretion – I’m not sure how consistent it would be with the constitutional precepts and the underlying position, but if it would satisfy those two factors I would not be concerned to grant the relief.
